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| 10/075,053      | 02/13/2002  | Robert C. Stevens    | RST 2 0011-3        | 8092             |

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EXAMINER

SIRMONS, KEVIN C

ART UNIT PAPER NUMBER

3767

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/075,053

Applicant(s)

STEVENS, ROBERT C.

Examiner

Kevin C. Sirmons

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-24 and 26-51 is/are pending in the application.
- 4a) Of the above claim(s) 12-23 and 29-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-11,24,26-28 and 41-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This application has been made non-final because claims 41-51 and not been examined and inconsistencies between rejected, canceled and withdrawn claims. Therefore, this application **was not** in condition for appeal

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens U.S. Pat. No. 5,972,143.

Stevens discloses a reinforced catheter comprising: a elongate flexible tubular member defining a lumen of the catheter, the tubular member having a first end defining a proximal end of the catheter and a second end defining a distal end of the catheter (40); a continuous coil reinforcement member carried on the elongate flexible tubular member and extending from the proximal end of the catheter to the distal end of the catheter (42); a first flexible outer coating covering the coil reinforcement member and the tubular member substantially entirely between the proximal end of the catheter and the distal end of the catheter (44); a second flexible outer coating covering a first portion of the first outer coating between the first transition area of the catheter and said proximal end of the catheter, a second portion of the first outer coating being uncovered

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by said second outer coating (product-by-process) and defining a flexible distal tip of said catheter, said first coating being softer than said second coating (col. 7); as to claim 6, (fig. 4); as to claims 7, 8, (42); as to claims 9-11, (figs. 4a-4f).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens.

Stevens discloses a reinforced catheter substantially as claimed except for the various harnesses of the first and second coatings.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the hardness of the same or various materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended uses as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Furthermore, applicant has not disclosed that the aforementioned limitations provides an advantage, is used for a particular purpose and solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the device as taught by Stevens.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens in view of Weber U.S. Pat. No. 5,147,315.

Stevens discloses a reinforced catheter substantially as claimed except for a marker band disposed adjacent the distal end of the catheter on the outer coating. Weber discloses a marker band disposed adjacent the distal end of the catheter on the outer coating (fig. 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Stevens with the marker band as taught by Weber for locating the distal portion of the catheter.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens in view of Weber U.S. Pat. No. 5,147,315 and further in view of Adams et al U.S. Pat. No. 5,843,051.

Stevens in view of Weber disclose a reinforced catheter substantially as claimed except for wherein the marker band is formed of a one of gold material and platinum material.

Adams discloses a marker band is formed of a one of gold material and platinum material (41). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Stevens in view of Weber with the platinum band as taught by Adams for locating the distal portion of the catheter.

As to claims 24, 27, 28, 41, 42 and 43, Stevens discloses a reinforced catheter substantially as claimed however, it may not be clear whether or not the first material is softer than the second material. It would have been obvious to one having ordinary skill

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in the art at the time the invention was made to vary the hardness of the material(s), since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the materials of Stevens since, Stevens clearly discloses that his goal is to have a soft tip, therefore, he uses a softer plastic in the region of the tip (background of the invention). As to claims 27, 28, 42 and 43, (see above rejections).

Claims 44-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens in view of Murphy-Chutorian U.S. Pat. No. 5,972,143.

Stevens discloses the device substantially as claimed except for a marker band disposed adjacent the distal end of the catheter on the outer coating. Murphy-Chutorian discloses a marker band disposed adjacent the distal end of the catheter on the outer coating (63). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Stevens with the Marker bands as disclosed by Murphy, since it is notoriously well known in the art that Marker bands are placed on catheters to detect certain locations of the catheter. As to claim 45, (see col. 5); as to claims 46-47, (see above rejections); as to claims 48-49, (fig. 4); as to claim 51, (cols. 5-7).

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-11, 24, 26-28 and 41-51 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin C. Sirmons whose telephone number is 571-272-4965. The examiner can normally be reached on Monday-Friday 6:30-4:00 ALT FRI.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin C. Sirmons  
Primary Examiner  
Art Unit 3763

10/17/05

*Kevin C. Sirmons*